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FILED
HARRISBURG, PA

DEC 12 2002

MARY E. D'ANDREA, C
Per [Signature]
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY YORDY,
PLAINTIFF
v.

:
:
:
: CIVIL ACTION 1:01-cv-0206

SCOTT BROWN,
individually
and in his official capacity
as an employee and agent of
the PENNSYLVANIA STATE POLICE
Defendant

:
: JURY TRIAL DEMANDED
:
: JUDGE KANE ✓

PAUL EVANKO,
individually
and in his official capacity
as an employee and agent of
the PENNSYLVANIA STATE POLICE
Defendant, et alii

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:
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:
:

PLAINTIFF'S PRETRIAL MEMORANDUM

A. FEDERAL JURISDICTION: The causes of action brought in

SERRATELLI, SCHIFFMAN BROWN AND CALHOON, P.C.
By: SPERO T. LAPPAS, Esquire

this Complaint are brought pursuant to inter alia Title 42, United States Code, sections 1983, 1985 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution, and the Civil Rights laws of the United States. Jurisdiction is founded upon 28 USC § 1331 and 1341 and the aforementioned statutory and constitutional provisions.

B. SUMMARY OF FACTS AND CONTENTIONS AS TO LIABILITY: Defendants Brown, Steager. and Brinser are liable to the Plaintiff for their assaults of the Plaintiffs and excessive use of force while effecting an arrest. Defendant Evanko is liable to the Plaintiff for the violations of Plaintiff's right to be free from unlawful police assaults (1) because Evanko had supervisory control over Brown and Evanko failed to act to correct Brown's conduct, see, Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294-95 (3rd Cir. 1997); (2) because Evanko's inaction in the face of Brown's terrible record constituted deliberate indifference to the rights of persons with whom Brown came into contact, see, Kneipp v. Tedder, 95 F.3d 1199, 1212 (3rd Cir. 1996), citing City of Canton v. Harris, 489 U.S. 378, 388, 109 S.Ct. 1197, 1203-04, 103 L.Ed.2d 412 (1989); and (3) because Evanko's inaction created a danger which deprived the Plaintiff of his Fourteenth Amendment substantive due process rights. See, Kneipp, supra, 95 F.3d at 1205.

C. DAMAGES: Plaintiff's damages include the following:

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- a. he suffered the loss of income;
- b. He was deprived of his liberty;
- c. He suffered great humiliation, embarrassment, mortification, and distress;
- d. He was subjected to unlawful, illegal and unreasonable and unconstitutional use of force;
- e. He was subjected to unlawful, illegal and unreasonable and unconstitutional arrest, detention, confinement, and inconvenience;
- f. He was deprived of his liberty in violation of the Constitutions of the United States of Pennsylvania and further in violation of state and federal law;
- g. He was put in fear of his well-being;
- h. He suffered the loss of valuable federally protected rights.
- i. The Plaintiff sustained physical injuries, damages, and losses, including physical and mental pain and suffering;
- j. The Plaintiff incurred medical expenses and other expenses related to the incident;
- k. The Plaintiff has lost earnings and/or earning capacity;
- l. The Plaintiff was required to undergo medical care;
- m. The Plaintiff was required to incur costs and/or to expend money on medical care, health care, and incidental expenses;
- n. The Plaintiff was for a time partially disabled;
- o. The Plaintiff has suffered grave and severe physical injuries;
- p. The Plaintiff has suffered great and severe physical and emotional pain, suffering and upset;
- q. The Plaintiff has been prevented from taking part in and performing the activities of employment, home life,

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personal life and social and recreational activities;

- r. The Plaintiff has been forced to undergo great and substantial inconvenience, aggravation, and loss of life's pleasures.

He was hospitalized overnight at the Hershey medical Center. His medical bills are approximately \$5,000.00.

E. WITNESSES: The Plaintiff will call the witnesses on the attached witness list. The Plaintiff will also call the treating physicians identified in the medical/hospital records.

F. EXPERT WITNESS TESTIMONY: The medical witnesses will testify about the Plaintiff's injuries. Corporal Baltimore, a state police firearms examiner will testify about his examination of defendant brown's gun. The mental health experts (Cadieux, Townsend, Greevy) will testify about their evaluations and treatment of defendant Brown.

G. SPECIAL COMMENTS ABOUT PLEADINGS AND DISCOVERY: None.

H. SUMMARY OF LEGAL ISSUES: The Plaintiff believes that there are no complicated legal issues in this case. The right to be free from police assaults is well established. Defendant Evanko's liability has been discussed supra and in the litigation of his Motion in Limine.

I. STIPULATIONS: Authenticity and admissability of exhibits.

J. ESTIMATED LENGTH OF TRIAL: 5 days.

K. ANY OTHER MATTER: Defendant Evanko has filed a Motion for Summary Judgement out of time and the Plaintiff requests that it be

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stricken.

- L. EXHIBIT LIST: Attached.
- M. SPECIAL VERDICT QUESTIONS: None requested.
- O. VIDEOTAPE/TRIAL DEPOSITIONS; None.
- P. Not applicable.

RESPECTFULLY SUBMITTED,

SERRATELLI, SCHIFFMAN, BROWN AND CALHOON, P.C.

By: 

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ATTORNEYS FOR THE PLAINTIFF

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YORDY WITNESS LIST

<u>WITNESS #</u>	<u>WITNESS</u>
1	BARRY BRINSER
2	BERON STEAGER
3	BRIAN PLASTERER
4	C. TOWNSEND VELKOFF, MS
5	CHARLES FORTNEY
6	CHARLES MACKLIN, ESQUIRE
7	CHARLES SCHMIDT, ESQUIRE
8	CHRISTINE KOSH, PSP
9	COLEMAN MCDONOUGH, PSP
10	DEFENSE TECHNOLOGY CORP
11	DONNA BROWN
12	EARL BLOSE
13	ELIZABETH VALENTINE
14	ERNST BALTIMORE, PSP
15	FRANCIS GROLEMUND, PSP
16	GEORGE PEACH, PSP
17	GLENN DOMON, PSP
18	GORDON BUSHELL, MD
19	HERSHEY MEDICAL CENTER
20	JOSHUA LOCK, ESQUIRE
21	KATHERINE DOUTT, PSP
22	KENNETH HILL, PSP
23	LARRY WILLIAMS, PSP
24	LINDA BONNEY, PSP HR DIR
25	LYNNE MOUNTZ
26	MERVIN RODRIGUEZ, PSP
27	MICHAEL GREEVY, PHD
28	PAUL EVANKO
29	PSP RECORDS CUSTODIAN
30	RANDY YORDY
31	ROBERT CLARK, PSP
32	ROBERT MRGICH
33	ROBERT MRGICH, PSP
34	ROGELIO GARCIA
35	ROGER CADIEUX, MD
36	ROGER SANTIWANY
37	SCOTT BROWN
38	STEPHEN CARUSO
39	STEPHEN KIESSLING, PSP
40	SUSQUEHANNA HEALTH SYS.
41	SYLVIA CUETO
42	UNIVERSITY EMS SERVICE
43	VICKIE RAE SMITH
44	WILLIAM FULTON, ESQUIRE

EXHIBIT #	EXHIBIT	DATE OF EXHIBIT	WITNESS
1	1.01 DEPOSITION OF SCOTT BROWN (CCP)	July 09, 2002	SCOTT BROWN)
2	1.02 DEPOSITION OF SCOTT BROWN (MDPA)	January 18, 2002	SCOTT BROWN
3	1.03 FIREARMS SCORING TALLY SHEET FOR SCOTT BROWN	April 08, 1998	SCOTT BROWN
4	1.04 VIDEOTAPE OF ASSAULT	February 04, 1999	SCOTT BROWN
5	1.05 MEMO FROM BROWN TO GROLEMUND	May 08, 1997	SCOTT BROWN
6	1.06 SCHMIDT, RONCA, AND KRAMER COMMERCIAL VIDEOTAPE		SCOTT BROWN
7	1.07 MEMO RE SCOTT BROWN (BPR 10248/DAR)	December 15, 1997	SCOTT BROWN
8	1.08 PHOTOGRAPHS OF SCOTT BROWN		SCOTT BROWN
9	1.09 SCOTT BROWN INTERVIEW	March 23, 1999	ROBERT MRGICH, PSP
10	1.10 PLEADINGS IN BROWN V. YORDY		CHARLES SCHMIDT, ESQUIRE
11	1.11 HERSHEY MEDICAL CENTER RECORDS FOR SCOTT BROWN		HERSHEY MED CENTER
12	1.12 AMBULANCE RECORDS FOR SCOTT BROWN	February 04, 1999	UNIVERSITY EMS SERVICE
13	2.01 DEPOSITION OF BARRY BRINSER		BARRY BRINSER
14	2.02 DEPOSITION OF BARRY BRINSER (CCP)		BARRY BRINSER
15	2.03 STATEMENT OF BARRY BRINSER	February 04, 1999	BARRY BRINSER
16	2.04 HOSPITAL RECORDS FOR BARRY BRINSER	February 04, 1999	HERSHEY MED CENTER
17	3.01 DEPOSITION OF BERON STEAGER		BERON STEAGER
18	3.02 DEPOSITION OF BERON STAEGER (CCP ACTION 5320 S 2000)	September 04, 2002	BERON STEAGER
19	3.03 STATEMENT OF BERON STEAGER	February 05, 1999	BERON STEAGER
20	4.01 DEPOSITION OF PAUL EVANKO	January 01, 2002	PAUL EVANKO
21	5.01 DEPOSITION OF VICKIE SMITH		VICKIE SMITH
22	5.02 DEPOSITION OF VICKIE RAE SMITH (CCP)	June 11, 2002	VICKIE RAE SMITH

EXHIBIT #	EXHIBIT	DATE OF EXHIBIT	WITNESS
23	5.03 RECORDS FOR COMMONWEALTH V VICKIE RAE SMITH		WILLIAM FULTON, ESQUIRE
24	5.04 CRIMINAL COMPLAINT COMMONWEALTH V VICKIE SMITH		WILLIAM FULTON, ESQUIRE
25	6.01 GENERAL INVESTIGATION REPORT IAD 11-257	April 09, 1999	ROBERT MRGICH
26	6.02 PSP INCIDENT REPORT H1-1051327	February 09, 1999	STEPHEN CARUSO
27	6.03 SEARCH WARRANT, APPLICATION, INVENTORY AND RECORDS SEIZED	March 04, 1999	STEPHEN CARUSO
28	6.04 DEPOSITION OF STEPHEN CARUSO (CCP)	June 11, 2002	STEPHEN CARUSO
29	6.05 CHEMICAL TESTINGS WARNING FOR RANDY YORDY	February 09, 1999	STEPHEN KEISSLING
30	6.06 DEPOSITION OF STEPHEN KIESSLING (CCP)	September 04, 2002	STEPHEN KIESSLING, PSP
31	6.07 PSP COMMUNICATIONS MEMO	February 04, 1999	PSP
32	6.08 PSP RADIO COMMUNICATIONS TAPE	February 04, 1999	PSP
33	6.09 MATERIAL DATA SAFETY SHEET		DEFENSE TECHNOLOGY CORP
34	6.10 PSP FORENSICS CID REPORT RE BROWN'S FIREARM	March 11, 1999	ERNST BALTIMORE, PSP
35	6.11 STATEMENT OF MERVIN RODRIGUEZ, PSP	February 05, 1999	MERVIN RODRIGUEZ, PSP
36	6.12 DEPOSITION OF ROBERT CLARK (CCP)	September 04, 2002	ROBERT CLARK, PSP
37	6.13 AERIAL PHOTOS OF OLD JONESTOWN ROAD	March 11, 1999	ROBERT CLARK, PSP
38	6.14 PHOTOGRAPHS OF INCIDENT (A,B,C,D)		ROBERT MRGICH, PSP
39	7.01 PERSONNEL FILE FOR SCOTT BROWN		LINDA BONNEY, PSP HR DIR
40	7.02 DISCIPLINARY RECORD RE SCOTT BROWN	July 16, 1997	LARRY WILLIAMS, PSP
41	7.03 DISCIPLINARY ACTION REPORT RE SCOTT BROWN	December 10, 1997	LARRY WILLIAMS, PSP
42	7.04 ARBITRATION OPINION AND AWARD	June 28, 1998	LYNNE MOUNTZ
43	7.05 ARBITRATION OPINION RE SCOTT BROWN	April 26, 1999	LYNNE MOUNTZ
44	7.06 DISCIPLINARY SUMMARY REPORT	April 30, 1997	FRANCIS GROLEMUND, PSP

	EXHIBIT #	EXHIBIT	DATE OF EXHIBIT	WITNESS
45	7.07	GENERAL INVESTIGATION REPORT RE SCOTT BROWN	May 09, 1997	FRANCIS GROLEMUND, PSP
46	7.08	EMPLOYEE PERFORMANCE REVIEW	March 05, 1999	GEORGE PEACH, PSP
47	7.09	MEMO TO LINDA BONNEY	September 19, 2000	COLEMAN MCDONOUGH, PSP
48	8.01	DEPOSITION OF RANDY YORDY		RANDY YORDY
49	8.02	DEPOSITION OF RANDY YORDY (CCP)	June 11, 2002	RANDY YORDY
50	8.03	RECORDS FOR COMMONWEALTH V. YORDY		JOSHUA LOCK, ESQUIRE
51	8.04	PHOTOGRAPHS OF RANDY YORDY		RANDY YORDY
52	8.05	CRIMINAL COMPLAINT COMMONWEALTH V YORDY		JOSHUA LOCK, ESQUIRE
53	8.06	HERSHEY MEDICAL CENTER RECORDS FOR RANDY YORDY		HERSHEY MED CENTER
54	8.07	MEDICAL BILLS FOR RANDY YORDY		HERSHEY MEDICAL CENTER
55	8.09	PRELIMINARY HEARING TRANSCRIPT, COMM V YORDY	February 23, 1999	JOSHUA LOCK, ESQUIRE
56	8.10	EMERGENCY ROOM REPORT OF SYLVIA CUETO MD (RANDY YORDY)	February 04, 1999	SYLVIA CUETO
57	8.11	EMERGENCY ROOM REPORT OF ELIZABETH VALENTINE MD (RANDY YORDY)	February 05, 1999	ELIZABETH VALENTINE
58	8.12	AMBULANCE RECORDS FOR RANDY YORDY	February 04, 1999	UNIVERSITY EMS SERVICE
59	9.01	PSYCHOLOGICAL RECORDS FOR SCOTT BROWN		C. TOWNSEND VELKOFF, MS
60	9.02	PSYCHIATRIC REPORT RE SCOTT BROWN	December 12, 2000	GORDON BUSHELL, MD
61	9.03	PSYCHIATRIC REPORT RE SCOTT BROWN	November 17, 2000	ROGER CADIEUX, MD
62	9.04	RECORDS OF MICHAEL GREEVY		MICHAEL GREEVY, PHD
63	9.04	MENTAL HEALTH RECORDS FOR SCOTT BROWN		SUSQUEHANNA HEALTH SYS.
64	10.01	RECORDS RELATING TO CHRISTINE KOSH INCIDENT		CHRISTINE KOSH, PSP
65	11.01	RECORDS RELATING TO BRIAN PLASTERER INCIDENT		BRIAN PLASTERER
66	12.01	RECORDS RELATING TO ROGELIO GARCIA INCIDENT		ROGELIO GARCIA

	EXHIBIT #	EXHIBIT	DATE OF EXHIBIT	WITNESS
67	12.02	COURT PAPERS RE GARCIA V BROWN		CHARLES MACKLIN, ESQUIRE
68	12.03	STATEMENT OF ROGER SENTIWANY RE ROGELIO GARCIA INCIDENT		ROGER SANTIWANY
69	12.04	SWORN STATEMENT OF CHARLES FORTNEY RE ROGELIO GARCIA	November 19, 1996	CHARLES FORTNEY
70	13.01	RECORDS RE EARL BLOSE INCIDENT		EARL BLOSE
71	13.02	INTERNAL AFFAIRS INVESTIGATION RE EARL BLOSE INCIDENT		PSP
72	13.03	LETTER #1 FROM CAPT KATHRYN DOUTT TO EARL BLOSE	March 29, 1994	KATHERINE DOUTT, PSP
73	13.04	LETTER #2 FROM CAPT KATHERINE DOUTT TO EARL BLOSE	March 29, 1994	KATHERINE DOUTT, PSP
74	14.01	GENERAL INVESTIGATION REPORT RE 4/10/96	June 18, 1996	GLENN DOMON, PSP
75	14.02	LETTER FROM KENNETH HILL		KENNETH HILL, PSP

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a true copy of the attached document upon the person(s) named below by mailing a copy addressed as follows, postage pre-paid, deposited into the U. S. Mail at Harrisburg, Pa.

GREGORY NEUHAUSER, ESQUIRE
OFFICE OF ATTORNEY GENERAL
LITIGATION SECTION
15TH FLOOR, STRAWBERRY SQUARE
HARRISBURG, PA. 17120

RESPECTFULLY SUBMITTED,

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